ART. VI. — *Annual Message of the Executive to the General Assembly of Maryland.* December Session, 1842. Annapolis: George & William Johnston, Printers. 8vo. pp. 20.

IT has often been remarked, that the most valuable gifts of nature are precisely those which are bestowed with the greatest profusion. It requires some effort of reflection to recognize and acknowledge the number and magnitude of those blessings which are showered upon all mankind alike, and are essential to their very existence ; though, from their continuous character or their incessant recurrence, we are apt, in summing up the good and ill of our earthly lot, to pass them by in utter heedlessness, or to forget them amid a whirl of cares and perplexities resulting from the casual absence of some minor, and in comparison quite insignificant, object of desire. The air, the water, freedom of speech and motion, health of mind and body, the unimpaired possession of the senses, abundance of daily food, friends, a fine sky, a beautiful prospect, — these are the most common things in the world, but they are those of which we take the least account. They are the heritage alike of the king and the mendicant ; but the one is too proud, and the other too miserable, even in the midst of them, to think of being grateful for their presence. Common language, which is the exponent of common feeling, has no phrase to express the value of those things which cannot be bought and sold, because, being universally diffused, no one can convert them into his exclusive property. Most men are like the political economist, who recognizes no value but that which is marketable.

The case is quite similar in the social state, with respect to the advantages which redound to mankind from the mere existence of society, irrespective of the greater or less skill manifested in its constitution, or of the comparative intelligence and virtue of its members. Companionship, general security of life and limb, the institution of property, the division of labor, the tacit laws which regulate our intercourse with each other, the facilities for extending that intercourse to an indefinite extent, — all are benefits which are experienced alike by the subjects of the best and the worst government, and which mark out the situation of those subjects as

immeasurably superior to the merely animal existence of the solitary and the brute. We speak of gross tyranny, or an essentially evil government, as a thing which ought to be resisted even at the expense of life, — not because it deprives us of a thousandth part of the things which render life desirable, — but because it is the denial of a right — a *perfect* right — which the first impulses of our nature require us to maintain, though the object which it covers may be too insignificant to deserve a moment's consideration. Despotism makes but a small inroad on a man's daily comforts, on the sum of his means of enjoyment. It levies an unjust impost of three pence a pound on tea ; it requires one man to contribute six pence to the support of government, while his neighbour, having equal means, is taxed but four pence ; it enjoins upon all persons to forego the open expression of their opinions on two or three topics, though they may think what they like in reference even to these, and may say what they like on the innumerable other themes of speculation and discourse.

> " How small of all that human hearts endure,
> That part which laws or kings can cause or cure."

There is no great hardship in the case apparently, when viewed in this light ; but men go to war about it, and make revolutions, and equip armies and fleets, and shed blood, and acquire undying reputation for patriotism by these efforts, not because they avoided the payment of an insignificant tax thereby, but because they successfully defended a principle. They wholly disregard the countless other blessings, of infinitely greater importance than the original subjects of dispute, and which they might quietly have enjoyed under the old government to the end of time, without let or hinderance.

If we go one step farther, and look at society and government in their best estate, we are still struck by the same fact, — that far the most important and beneficial results are produced by that part of the social machinery which is most quiet in its operation, and consequently attracts the least notice and remark. The motive and the regulating power, that which keeps every part of the vast machine in motion, which turns the drums and the cranks, lifts the ponderous hammers, and guides the wheels in their swiftest whirls, is placed precisely in that portion of the building where there is the least

clanking and din. Slowly and silently the great water-wheel revolves in the basement story, while the stir and the Babel are in the apartments above. Equally powerful and noiseless in their operation are the great springs of government, while the loudest clatter attends the working of the least efficient department of the state. The legislature is essentially a noisy body, a blatant beast ; and its real activity and efficiency are generally in inverse ratio to the bustle and clamor which it makes. It enacts laws and repeals them, though its debates are often conducted with the greatest heat and vehemence, when there is the least prospect of doing either, — when an empty resolution, a mere declaration of opinion, is the only subject of dispute. The fundamental laws of the state, the principles of the constitution, are those which it dares least frequently to touch, though they form the constant topic of vociferous declamation and angry debate. The position of the executive in modern days is equally conspicuous and arrogant, while its influence on the general well-being of the country is even less constant and less perceptible. In a monarchy, it is a pageant or a symbol ; in a republic, it is an object of noisy ambition, and a dispenser of gifts to clamorous applicants. In the former case, the fortunes of an individual subject are but little affected, though the throne may be occupied by a sot, a driveller, or a knave ; in the latter, only the persons who fill the inferior offices have a deep interest in the character of the incumbent of the executive chair. The prosperity of the community at large, in every material respect, except on rare emergencies, is beyond his action and control. Yet the succession to a throne, or the election to a presidency, stirs the minds, or rather the passions, of men, as if the result were to modify essentially and continually the outward weal and the fireside comforts of every citizen. What a turmoil, and a running to and fro, and a gathering of multitudes, and a waste of speech and print, occur every four years in this country ; and yet, when the contest is over, how trivial is the effect on every actor in the busy scene, apart from the gratification of his pride or his vanity in the success of the cause to which he is attached ! The poor are still condemned to the same dreary routine of toil, and the rich are arrayed in fine linen and fare sumptuously, and neither Van Buren nor Clay can help the one, nor prevent the other.

But there is one department of the government which goes silently on its way, unceasing and indefatigable in its labors, neither attracting nor heeding the remarks of the multitude, though the property, the honor, the security, and even the life, of every citizen are subject to its control and protected by its power. We refer, of course, to the Judiciary. Who can estimate the sum of the influences of this portion of the social machine, or the variety of the directions in which they are exerted? Through the whole country, not a bargain is made, nor an institution founded, nor a marriage contracted, nor a death occurs, but that this powerful and almost unseen agent controls the expectations of the actors or the spectators, and decides what shall be the consequences of the act. It is this power in the state which determines, almost exclusively, the measure of that protection which government affords to all its subjects, and for which it is instituted and they are taxed. Whoever suffers a wrong, or claims a right, whatever be its nature or extent, looks to the judiciary for redress or support. In the confidence that this defence or compensation will be afforded by it, he accepts the engagements of his neighbour, relies on his promises, confides his property to other hands, walks the streets in perfect security by night as by day, and sleeps, if he chooses, with his doors unbarred, and not a weapon in his house. And how little notice is taken of the operations of this salutary agency, and how quietly it does its work! The sleepless activity of the law, the constancy with which its influence is felt, and the implicit reliance which we place in its integrity and watchfulness, seem effectually to blind us to any proper sense of its dignity and importance. We receive its benefits as we do the influences of the sun and rain, as we inhale the air, or slake our thirst from the running stream, without taking any note of the magnitude of the gift which we enjoy. Only some fearful convulsion, by loosening all the bands of social order, and violently interrupting the workings of this great machine of state, could convince men of its value by making them sensible of its loss. Ordinary political disturbances are insufficient to stay or impede its continous operation. Even during the darkest period of our Revolution, the doors of the courts remained open, the complainant was heard, and justice was rendered.

That is but a superficial view of the subject, which regards

the judiciary only as the creature of the legislature, bound merely to watch over the quiet and equal operation of the laws made for it by a superior power. Legislative action is too feeble, desultory, and short-lived, to modify to any great extent the vast body of principles and usages for the guidance of the courts, which have been silently accumulating during the lapse of ages. Slowly and painfully it introduces a few new elements into the aggregate, but the character of the whole evinces essential change only after the interval of centuries. In this country, we are even now reaping the fruits of the legislative wisdom of Edward the First, and of the acumen and wisdom of judges who occupied the bench during the reign of the Tudors. Our ancestors brought with them to these shores the great collection of unwritten maxims and customs, called *the common law*, as the most precious portion of their English birthright; and, adopted either by express enactment or quiet assumption, it has remained with us to this day, not only coloring the whole stream of our legislation, but still constituting in itself the main body of our jurisprudence.

"It was not introduced," says Mr. Justice Story, "as of original and universal obligation in its utmost latitude; but the limitations contained in the bosom of the common law itself, and indeed constituting a part of the law of nations, were affirmatively settled and recognized in the respective charters of settlement. Thus limited and defined, it has become the guardian of our political and civil rights; it has protected our infant liberties; it has watched over our maturer growth; it has expanded with our wants; it has nurtured that spirit of independence which checked the first approaches of arbitrary power; it has enabled us to triumph in the midst of difficulties and dangers threatening our political existence; and by the goodness of God, we are now enjoying, under its bold and manly principles, the blessings of a free, independent, and united government."

Commentaries on the Constitution. Abridged edition. § 80.

The reason why the law is built upon so broad a foundation, and towers to so vast a height, is to be found in the variety, complexity, and magnitude of the interests which it covers. The operations of the judiciary are necessarily coextensive with the affairs and pursuits of men,— with the diversity of employments, the entanglements of business, the wiles of fraud, the species of crime, the modes and difficul-

ties of proof, and the causes of dispute, which mark the variety of character, and give full scope to the activity, of the human race. No cause is too mean to claim its attention; no interest is so great as to rise above its control. The doors of the courts are open to every human being, on whatever errand he may come. And in order that equal justice may be rendered, and each case decided on its own merits, and not by the caprice or uncertain judgment of any man or set of men, it must be tried by invariable and equitable principles, previously known and established. Instead of wondering, therefore, that the science of law should be so extensive and complex, we ought rather to admire that human assiduity and patience should ever be capable of mastering its provisions. Attempts are made from time to time to simplify, abridge, and methodize some portions of the vast code; but so long as the infinite diversity of cases exists, which come up for trial, and so long as it is deemed necessary for the ends of justice and the satisfaction of the parties, that each one should be determined by a fixed principle, and not by a sentence wholly arbitrary and capricious, so long evidently these attempts can have but very partial success. Often they increase the evil which they were designed to lessen. A law must be interpreted, and every new enactment supplies fresh difficulties of this nature to be overcome. Let the statute be framed in the most comprehensive and lucid language, with the greatest skill and circumspection that human infirmity will admit; yet cases soon arise of a wholly unexpected and unprecedented character, and the question is immediately mooted, whether they fall within the scope of this particular enactment. We cannot refer to the intention of the legislators for the solution of this doubt, since the case was not foreseen, and therefore not provided for, by the founders of the law. Here then is fresh matter for the decision of the court; a new rule of interpretation, a new governing precedent for future cases, is to be established in consequence of the very statute which was framed because the number of such rules and precedents was already too great.

In the collateral circumstances with which every legal question is surrounded, and which must, in some measure, control the decision, though they form no proper part of the case itself, we find additional reasons for the great accumula-

tion and constant increase of the principles of jurisprudence. Among these accessories are the rules of evidence, the interpretation of papers, the conflict of testimony, the forms of procedure, and, in short, all the circumstances through which the facts are ascertained and the trial conducted, apart from the mere determination of the law which governs the chief point in dispute. Over this great range of multifarious subjects, and guided by such an imposing array of maxims and usages that have been accumulating for ages, the power of the judiciary extends. There is not a member of the community whom its decisions do not more or less immediately affect; there is hardly one who does not, more or less frequently, claim its direct interference. And the results of the decisions come home most closely to a man's bosom; they affect his dearest interests, and stir his strongest passions. A litigant is, proverbially, an excited and unreasonable man. He has suffered a wrong, in imagination, at least, if not in reality; and the promptings of pride and resentment, as well as the hope of pecuniary gain or compensation, blind his judgment, and hurry him into inconsiderate action. Perhaps the feelings of a public prosecutor, aiming to remove a common grievance, or of a politician, urged to seek protection and redress by the injuries of a party, mingle with and excite his peculiar and personal motives to action. In any and every case, he appears in court agitated by the most powerful impulses that can swell the human heart. The decision sends him away either elated and triumphant, or a humiliated and disappointed man, — vanquished in a contest on which he had set his heart, and perhaps a bankrupt in fortune and reputation.

Yet how quietly the system works! After all the excitement and intensity of feeling with which the cause was first propounded, and the case conducted, the decision is received in submission and silence. Some indignation may be expressed against the inequality or insufficiency of the laws, but not a murmur against the character of the tribunals where they are interpreted and applied. Even the daily press, that faithfully records the most trifling transactions of the day, seldom deems it necessary to chronicle the proceedings of the courts. Sometimes, indeed, a criminal trial is held, involving the character of persons or events that have recently excited public attention; and then the progress of the cause is eagerly watched. But even in this case, when the verdict

is rendered, or the judgment passed, curiosity and excitement appear at once to subside, and few are found audacious enough to question the legality or fairness of the proceedings. And the number of such cases is very small, and their importance trifling, when compared with the variety and the momentous consequences of the others which continually tax the silent and unnoticed industry of the courts. Why is it, then, that disappointment, and malice, and anger do not in these cases, as in all others wherein hopes are deceived, or fraud detected, or guilt exposed, lead to vehement abuse and outrageous assaults? How is the judiciary protected from the secret calumny or open abuse, which continually follows every other department of the public service? Why are men so patient under the operation of decrees, which strip a portion of them of their fortunes, or affix a lasting stain upon their reputations, or wound them in their tenderest feelings by doing these injuries to their nearest connexions and friends? A judgment of the court effectually thwarts the execution of a scheme, in which a number of persons had embarked their property and their hopes; and though they had hotly resented the slightest criticism or opposition during its progress, they quietly resign themselves at last to the total defeat of their expectations, as if the final blow had been dealt by a superior power, against which it were idle to struggle, and sinful to complain.

But we gain a very imperfect idea of the confidence inspired by the judiciary, and of the reverent submission with which its acts are received, when we limit our view to the private cases, in which only individual citizens are concerned. In England, and in this country, — though with some limitations in the former case, as will appear hereafter, — the courts are the tribunals of final appeal, before which constitutional questions, and doubts respecting the legality even of legislative acts, are heard and determined. They are, in the highest sense, "the guardians of the constitution," appointed to see that the fundamental laws of the state shall receive no detriment. The controversies which they are thus called upon to decide have been agitated in the community with an earnestness and warmth commensurate with their intrinsic importance. In such discussions, popular excitement and the zeal and clamor of contending parties in the legislature have nearly silenced the voice of reason, and passionate declamation has usurped the province of grave debate. But

when these vexed questions come before the tribunals of law, they are discussed with as much patience and deliberation, with a logic as severe, and a power of analysis as searching, as if a mathematical problem were the only matter in dispute. The decision is at length made, and the controversy is put for ever at rest. The people acquiesce as implicitly as if their passions had never been excited; and a dispute, which seemed at one time to threaten the dismemberment of the state, passes entirely out of view, except as a matter of history.

We need not search far, either in English or American annals, for instances of what we have here described. Less than a century ago, Great Britain was convulsed by the dispute respecting the legality of *general warrants;* and the party of "Wilkes and Liberty" seemed for a period to menace the safety of the throne. The question was the most important one respecting the liberty of the subject that had arisen since the revolution of 1688; and every step taken by the ministry and the legislature seemed only to fan the popular tumult. Fortunately, it was one that admitted of legal arbitrament; and when the case came up for trial at the King's Bench, the judges formally decided, that general warrants were illegal and void. Public agitation at once subsided; Wilkes sunk into the obscurity which the profligacy of his character merited; Parliament retraced its steps, and, in the teeth of its former action on the subject, solemnly reaffirmed the decision of the court. The interference of the judiciary on this occasion, and its effect in stilling the wild uproar of political strife, seemed like the action of the sea-god in calming the troubled waters.

> "—— et dicto citiùs tumida æquora placat,
> Collectasque fugat nubes, solemque reducit."

Only three years ago, a similar controversy arising between the House of Commons and the legal authorities, involving the gravest questions of constitutional law, such was the confidence reposed by the people in the integrity and steadfastness of the courts, that the affair excited no alarm, and the tocsin of popular tumult was never sounded. We refer to the case of Stockdale and Hansard, in which the House of Commons went so far as even to imprison the sheriffs, who executed the orders of the judges. But the people, notwithstanding

their natural attachment to the popular branch of the legislature, which has always been the noisiest, but not the most effectual, guardian of their rights, seemed to take sides with the judiciary; and though the Commons acted with singular unanimity on the subject, their judgment was, in fact, reversed by the public. The equanimity and dispassionate conduct of both parties on such a trying subject must be attributed, almost entirely, to the high sense, which all persons entertained, of the justice and majesty of the law, as administered by the proper tribunals.

In this country, the effect of judicial proceedings on great constitutional questions was recently shown in a striking manner, in the case of *Prigg* vs. *The State of Pennsylvania.* Since the formation of the present government, no subjects have ever been debated with so much heat in Congress, or have excited such vehement controversy in the community at large, as those which involved the existence of slavery in the Southern States. Disputes on this head were among the chief impediments to the formation and adoption of the Constitution, and at various subsequent periods they have interrupted the harmony of legislation, and seemed to threaten the duration of the Union. So sensitive have men's minds become on this exciting topic, that a passing remark is resented like a studied attack, and in many quarters it is declared, that no open discussion of it shall be tolerated. The speck no larger than a man's hand is viewed with as much alarm as the thick gathering of clouds already black with the instant tempest. To the scenes which the agitation of this topic have occasioned on the floor of Congress, we need not allude farther than to say, that every friend to good order, to the reputation of the country, to the existence of the republic itself, must deeply deplore their occurrence. At this period of agitation and alarm, one of the gravest points belonging to the subject is carried up for decision to the Supreme Court of the United States. When this exciting cause came up for trial, the words of the poet might well have been directed to the court :—

> "Periculosæ plenum opus aleæ
> Tractas, et incedis per ignes
> Suppositos cineri doloso."

But at this majestic bar, the matter was argued with as

much dignity and calmness, as if it had never set the country in a flame; and the judgment was received by the public with the quiet submission which they usually manifest when ordinary judicial decisions are announced. Some murmurs were heard from both parties about the insufficiency or hardship of certain provisions in the constitution, but hardly a whisper against the fidelity and even-handed justice with which that instrument had been expounded by the court; and some of the States have already begun to modify a portion of their statutes, so that they may conform to the principle of this decision, now recognized as the established law of the land. Suppose the same matter had come before Congress, and this large and irritable body had been called upon to legislate on the mode of reclaiming fugitive slaves. We have no heart to imagine and describe the scenes which would probably have ensued, and we gladly leave the sketch to the conception of our readers.

It would be idle to pursue these illustrations of a fact so notorious as the beneficial action of the judiciary in quieting public contests, and maintaining unruffled the majesty of the law. Its continued and salutary influence is alike conspicuous, whether employed in the arbitration of private disputes, in regulating the descent and transfer of property, in preserving the peace of society by detecting fraud and punishing crime, or in allaying popular fever and tumult on the great questions of political right and constitutional law. And its regular and peaceful action, though far from being fully appreciated by the community at large, owing to the very circumstance of its quietude, is still revered and protected from an indistinct consciousness of the blessings which follow in its train. Amid all the uproar of party contests, while calumny and invective dog the steps of the executive and the legislature, while a ribald press is for ever throwing its poison and filth on nearly every public character, neither age, nor office, nor previous reputation affording any immunity from its obscene attacks, — the judges sit apart, like the statues of the ancient gods in a temple, imposing from the stillness of the scene, the awful majesty of their attitude and expression, and the unsullied whiteness of their marble robes. *What are the causes of this great contrast?* Why is it, that the mighty array of public opinion, which comes out into fearless contest with the other high authorities of the state,

— which does battle, when occasion calls, with Congress and Parliament, with kings and presidents, — on passing the august tribunals of the law, lowers its colors and silences its drums? In attempting to answer this question, some facts may be brought to notice respecting the position of the judiciary, which are too apt to escape the memories of men whose attention is so infrequently drawn to the subject, though they must be kept in mind, if we value and would preserve the most important advantages that result from the institution of society and the existence of law.

The first reason, then, why the courts are respected and upheld in their functions, is undoubtedly to be found in the nature of the subject on which they are engaged. Their office is the dispensation of *justice*, — the elucidation and enforcement of the idea of Right. They are revered from the reflected splendor and majesty of that virtue, which it is their high prerogative to unfold and maintain. "*Etenim omnes viri boni ipsam æquitatem et jus ipsum amant, nec est viri boni errare et diligere quod per se non sit diligendum. Per se igitur jus est expetendum et colendum. Quod si jus, etiam justitia; sic reliquæ quoque virtutes per se colendæ sunt. Ergo justitia nihil expetit præmii, nihil pretii. Per se igitur expetitur. Eademque omnium virtutum causa atque sententia est.*" * However the idea of abstract justice may seem to be covered up under the complexity of laws and precedents, and the technicalities of the courts, it is still the sole object of legal proceedings. Even enactments which are merely positive, and were not founded primarily on any dictate of natural law, acquire a moral force from their long standing; they become binding on the conscience, because, having governed the previous expectations and contracts, they are properly applied to determine the respective rights, of the parties to a suit. The legislature is guided by considerations of expediency, its aim being to advance the welfare of the state by watching over its temporal interests; and if higher objects are ever promoted by it, as when it favors honesty and religion by providing for the punishment of blasphemy and fraud, it is only because these virtues are subsidiary to lower ends, — because, in the long run, even in this world, honesty is the best policy, and religion the

* Cicero, *de Legibus*. i. 18.

highest gain. This task it shares with the executive, the province of which is coördinate with its own, both having the same ends in view, though different means are allotted to them for the attainment of those ends. Both are bound to the service of the state, and their rule of action is *salus reipublicæ suprema lex.* But the judiciary has a higher aim, and is governed by a nobler rule. It is bound to do justice though the heavens should fall. Thus it sometimes interferes with the action of the two other departments of government, and thwarts their best laid schemes for the public advantage, by defending the cause of Right. It bridles the legislature in the name of the constitution, and it stands between executive power and the rightful liberties of the subject. Thus the natural reverence of men for justice and the instinctive moral promptings of the heart are enlisted in favor of the courts, and hold up before the judges a shield against violence or contempt.

But the sacred character of the functions of the courts would not alone suffice to procure for them all the consideration and deference which they actually enjoy. The second, and probably the most efficient, cause of their high reputation and commanding influence is *the independence of the judiciary.* The tenure by which the judges hold their office shields them even from the suspicion of truckling to the chief power in the state, or of sacrificing in any way the ends of justice for their own advantage. The basis for this independence of our national judiciary is established in the constitution of the United States, which declares, that "the judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." A majority of the individual States have followed the example thus set by the nation at large, and have placed their respective legal tribunals on an equally stable foundation; and most of those which have in any way limited their judges' term of office, have established periods of seven, twelve, or fifteen years,— a length of time which gives a considerable, though certainly an insufficient, guaranty of the independence of the courts. In one State only, Vermont, the judges are appointed to office but for one year; but even here, the good sense of the people, aiming to remedy the defects of their fundamental

laws, has induced them each year to reappoint the old incumbents with so much regularity as to establish the semblance of an independent bench. In England, as is well known, the judges were made independent soon after the revolution of 1688,* and the change has produced the most important and beneficial results in respect both to the character of the bench and the liberties of the people. Before it was made, the state trials were a disgrace to the character of a people that had any pretensions to freedom. The courts before which Hampden, and Russell, and Sidney were tried, went through a solemn farce to which it were mockery to give the name of justice. But since the alteration, the moderation of the officers of the crown, and the fairness and inflexible integrity of the bench, have cast an imperishable lustre on the judicial history of England. We need not specify instances, for since that period not one state prosecution has been conducted in a way to raise even the suspicion, that undue influence was allowed to the counsel for the crown, or that the court had prejudged the case.

The independence of the judiciary rests upon two points, — that the judges hold office for life, except they subject themselves to impeachment, and that they receive an honorable support, which shall not be lessened during their period of service. When these points are secured, not only are all temptations to swerve from the strict path of rectitude removed as far as is practicable, but not even suspicion can be turned against them. The breath of an imputation cannot obscure the mirror of justice. And this immunity is essential to the working of the system, and to the preserva-

* "In order to maintain both the dignity and independence of the judges in the superior courts, it is enacted by the statute 13 Will. III. c. 2, that their commission shall be made, not, as formerly, *durante bene placito*, but *quamdiu bene se gesserint*, and their salaries ascertained and established; but that it may be lawful to remove them on the address of both houses of parliament. And now, by the noble improvements of that law in the statute of 1 Geo. III. c. 23, enacted at the earnest request of the king himself from the throne, the judges are continued in their offices during their good behaviour, notwithstanding any demise of the crown, which was formerly held immediately to vacate their seats, and their full salaries are absolutely secured to them during the continuance of their commissions; his majesty having been pleased to declare, that he looked upon the independence and uprightness of the judges as essential to the impartial administration of justice; as one of the best securities of the rights and liberties of his subjects, and as most conducive to the honor of the crown."— Blackstone's *Commentaries*, I. 278.

tion of that public confidence in the judicial tribunals, which is the surest guaranty of public order. The judges must not only *be*, but *seem*, just. The character which they bear is a thing of quite as much importance for the common weal as the intrinsic equity of their proceedings. It is little for me that a man at a distance, of whom I never heard before, is defrauded of his due in the courts. But it is much for me to *feel the assurance*, that, if my person or property is ever wrongfully attacked, I shall find a just and powerful protector in the law. Such an assurance conduces much to the security and happiness of life, though one may never have occasion actually to invoke the aid of this strong champion.

We say, that all temptations are removed *as far as practicable ;* for it cannot be denied that, even in this independent and honorable station, an avaricious judge may, if he chooses, "contaminate his fingers with base bribes," and sell the judgment and his own integrity. But those who lay stress upon this danger show that they have little knowledge of human nature. The gross temptation of a bribe may not allure a man to a flagrant violation of his oath, though the secret promptings of self-interest, the desire of pleasing a powerful friend, the hope of obtaining a reappointment to a lucrative office, may bias his reason by insensible degrees, and finally lead to a judgment as iniquitous, as if it had been openly purchased in court. Virtue is usually sapped and mined, not taken by storm. Put a man out of the reach of these insidious temptations, which do not call upon him to sacrifice his honor and integrity at once, and with full consciousness of what he is doing, but which beset and perplex the mind with the prospect of great ultimate good to be obtained by trifling and gradual deviations from the straight path, — put him away, we say, from these cunning enticements, and he will angrily repel the shameless rogue, who comes in the broad light of day to buy his conscience. When passion, or avarice, or ambition is tugging at the heart-strings, a man becomes a sophist to himself, and will try all the wiles of casuistry in order to varnish over the crime, and give it the poor semblance of virtue. Any one can resist Apollyon, when he comes in his proper shape, with horns and hoof, or as a grovelling snake ; but the cunning devil appears as a beautiful woman or a judicious friend, and the

poor dupe clasps him to his bosom and is entangled in the snare.

Now, the practice of the courts abounds with dangers of the very class which we have here described. Perplexed and difficult cases are continually rising, in which the rights of the respective parties are separated by the difference of a hair. So evenly does the matter lie between them, so doubtful is the rule of law to be applied to such an obscure and intricate question, that all the acumen of a sharp and vigorous intellect can hardly determine on which side equity and legal authority incline. Let self-interest, in the mind of the judge, put a feather into the balance, and it will turn the scale. He must be a poor sophist, in so nice a case, who cannot blind himself so far as to believe, that justice actually requires that decision which is most accordant with his own feelings and ulterior views. The constitution, therefore, wisely frees the mind of the judge from any anxiety respecting his own situation and support. He is made to feel, so far as is possible, that his post is a permanent one, not dependent on the will of a monarch, or the caprice of a party; — that he is set to be the guardian of the laws for the good of the public, and not to waste his thoughts upon his private concerns. Being thus relieved from the carking cares, which too often vex and annoy men out of their integrity, and being chosen from that class, whose talents, learning, and character are a sufficient safeguard against gross and palpable violations of right, it is not strange that the reputation of the courts has so long remained unsullied. In England, we believe, not a judge of the higher courts has been removed by address of the two houses of parliament since the independence of her judiciary was established. In this country, not one member of the national judiciary has been arraigned at the bar of the Senate on any charge affecting his honor or integrity.

It may seem superfluous to argue in defence of that constitution of the courts of law, which has been so long approved by the experience both of England and America, and by the suffrage of nearly every political or juridical writer of any note. But the advantages resulting from it are so quiet and perennial, that they easily escape the attention; and, in a free country, the mania of political innovation is so great, that without constant watchfulness, there is serious

danger lest the most important institutions of society should be tampered with, till their influence is weakened or their efficiency destroyed. A theory, under a specious name, may be allowed to supplant one of those time-honored establishments, which have ever afforded the best protection to the rights of the individual, and to the highest interests of the commonwealth. There are ominous signs in this country at the present day, which lead to some apprehensions of such a fatal result. The judiciary is attacked in some of the States, not only by diminishing the salaries of the judges, where it was possible, but by doubts openly expressed whether any institution ought to exist here, which is beyond the popular control. The opinion is plainly avowed, that the will of the people, for the time being, ought to be the only law, and that all restraints upon it, of whatever nature, should be done away. So long as such opinions and doubts were confined to the electioneering harangues of a few demagogues, or to the columns of a few worthless newspapers, they could not effect much injury, and did not deserve serious notice. But when they are found embodied in official documents, when the governor of one of the "old thirteen states" gives them place in his annual message to the legislature, it behooves the friends of free government and of the reputation of the country to be on the alert, and to arrest the evil, if it be possible, ere it is too late.

We know not that this question has ever been agitated between the great political parties which divide the country. Probably it has not been, and we fervently hope that it never may be. The independence of the judiciary is no subject for the common strife of faction and interest, — no topic to be debated in the heat of contest, — no material to be hammered out into "political capital." We know not even to which of the two great parties Governor Thomas belongs, and though this point might be determined in a moment, we have studiously abstained from asking the question. It is possible, that he has only published in an official way a doctrine which other persons, of equal respectability, have freely avowed and defended on other occasions. Be this as it may, we consider the doctrine as a dangerous heresy, and shall comment upon it with the utmost freedom, though without the slightest intention of trenching upon that class of political discussions, from which this Journal has always carefully ab-

stained. We quote the whole passage relating to this subject from the Annual Message of Governor Thomas, the title of which is placed at the head of this article.

"We have in commission twenty-one common law judges and a chancellor, at an expense for their salaries of $36,500 per annum. There can be no question, but that many of these officers are supernumeraries. We are now surrounded by States, in no one of which is to be found such an extravagant and ill-organized judiciary system as ours, and in all of which, the laws are still faithfully executed without complaint from the public as to their delay, and an absence of all protest by the judges in commission, against the imposition of duties too onerous to be easily performed. Indeed, there is not a State in the whole Union, notwithstanding the population of several of them is quadruple that of ours, where the number of the law judges, and the amount of their salaries, are not less than those of Maryland. New York, Pennsylvania, Virginia, and Ohio having, three of them, a population four times greater, and one of them a population more than three times greater than ours, pay respectively a less sum in the annual salaries of their judges than that with which our treasury is charged. The same States have each a superficies over which their laws are extended, more than four times as great as that of Maryland, and nevertheless have in commission a less number of judges. In the payment of unnecessary salaries to judges, since our system was framed, more than five hundred thousand dollars have been wasted. With these illustrations before us, of the effects to be expected from a reorganization of the system, so as to diminish sensibly its cost, we ought not to pause in the discharge of a high public duty, from any apprehensions as to the effect of such a proceeding on the interests and well-being of society.

"Besides these objections to the system, another will be found in the fact, that no effectual means are provided in the Constitution, to get rid of judges once commissioned, as promptly as the public interests may sometimes demand. The tenure during good behaviour is found in practice to be tantamount to a term for life. A judiciary independent of all the evil passions that may influence, at intervals, the mass of the community, is certainly desirable. But it does not appear, that a tenure for life will, in itself, exempt the occupant of a seat on the bench from the possibility of feeling, in a greater or less degree, a sympathy in the passions that sometimes sway to and fro our popular assemblies. Observation compels us all to contest such a conclusion. A tenure for life is, and ought to be, a popular doc-

trine in Great Britain. Such a tenure there, may afford a safeguard to the people against the influence of the Crown. The commissions of the judges being granted by the king, a periodical reappointment would give to the sovereign a most dangerous power in the opportunity to dismiss all who were not willing to prostitute their offices to subserve his purposes, however tyrannical and unwarrantable. Here, we have no permanent or hereditary executive to dread. All our public functionaries, but the judges, return at stated periods, to their separate stations in private life, to give place to successors qualified to rule, by having been taught to obey. It is believed, that there can be found neither in our experience, where the life tenure of judges prevails, nor in the experience of several of the States of the Union, where all such distrusts of popular intelligence and integrity have disappeared, any good reason for adherence to a doctrine becoming daily more and more obsolete. There was a time when improvements in government were hard to make. Those who were interested in existing abuses could arrest innovations and changes by magnifying and misrepresenting the effects of a proposed reform. But it is time that such artifices should lose all influence on our deliberations. In the hope that full justice will be done to all the deep interests involved, the whole subject, without further remark, is submitted to the Senate and House, who are empowered to make such alterations in the fundamental law of the State, as may be required." — pp. 17, 18.

Passing over, for the present, the question about the comparative cost of the system in Maryland and some of the neighbouring States, we observe, first, that the distinction which is here attempted to be set up between England and America, in respect to the independence of the judiciary, does not now exist. In state trials, in the former country, the real prosecutor now-a-days is not the crown, but the ministry, and that majority in parliament and among the electors at large, by which the ministry is supported. The monarchy is become a pageant and a name, the direct will of the sovereign hardly influencing any thing but the appointments in his own household. The party that holds the reins of government for the time being, whether Whig or Tory, institutes legal proceedings against political offenders in the name of the sovereign, but really in its own behalf. That party holds in its hands the power and the patronage of the state, and, in its eagerness to defend and strengthen its position,

would wield these means effectively for the destruction of its most active opponents, if it were not checked by the independence and integrity of the courts. The most turbulent among the Chartists are tried and sent to Botany Bay, not by the will of the Queen, nor even by that of Lord Melbourne or Sir Robert Peel, but by the two great parties among the voters in the realm by whom those political leaders respectively are supported. The case is precisely similar in this country. The rights of a citizen are endangered, if at all, not by an ambitious and reckless president, or a corrupt cabinet, but by the passions and the strength of a dominant party in the Republic, which, while engaged in the hot pursuit of its favorite measures, recks not of the sacrifice of an individual among the crowd. Here, then, as well as in England, an independent judiciary is needed to protect the weak against the strong, — to guard the property, the interests, and even the life of a citizen, not against the arbitrary will of a single despot, but against the violence and recklessness of a more formidable enemy, an excited political party.

We speak here of "the rights of *a citizen*," purposely avoiding the use of that convenient but vague abstraction, "the liberties of *the people*." An aggregate must be composed of units; the population of a country is made up of individuals. True political liberty consists in the protection afforded to the rights and interests of each inhabitant, and not in allowing any casual aggregation of those individuals, which may form a majority for the time, to act its own pleasure at the expense of the weaker party. No one freeman is any farther interested in preserving the liberty of "the people," than as he is himself one of the people, and expects that his own privileges and rights will be best secured by caring for the welfare and security of the whole body to which he belongs. Of course, we speak only of his *direct* interest in the state, for by affection or sympathy, by the ties of blood or patriotism, he is bound in unselfish attachment to all who breathe the same air, and tread on the same soil with himself. But his only *immediate* stake in the freedom and welfare of the people at large is his own property and life, and he hopes to secure these by doing his share in guarding the property and lives of his fellows. The liberty of the people, therefore, is only a means, while the freedom

of the individual is the end. If a man is cheated by one of his associates, or defrauded of his dues by a corporate body, or has his house burnt over his head by a mob, it is no consolation for him to be told, that the people, of whom he is one, are still free, — that they can still elect their own magistrates, and make and repeal their own laws. On the occurrence of one of these calamities or wrongs, he does not even appeal to the people ; he does not summon a town-meeting, and lay before the assembled citizens the story of the injury he has suffered ; but he goes to the tribunals of the law, cheering himself on the way by the reflection, not that the country is free, but that the judges are independent, and the integrity of the courts is sure. Within their walls, he knows that no undue or improper influence can exist, — that the party by whom he is aggrieved, whether it be an individual, a society, a political combination, or a mob, will there be powerless, and be compelled to make the compensation, or suffer the punishment, which justice requires.

With this view of the proper functions of a free government, believing that its only office is to afford a safeguard to the rights of every individual, we must maintain, in opposition to Governor Thomas, that an independent judiciary is even more necessary here than in England. *There*, the danger to any citizen, of suffering from the arbitrary will of the sovereign, is lessened by the existence of the many distinct orders and establishments in the state, the interests of one or more of which are probably linked with those of the person threatened, and their power is thus enlisted in his defence. King, Lords, Commons, the Judiciary, the Church, — it will be strange, indeed, if all these separate powers are combined for his destruction. In one or another, from community of interest, he will be sure to find sympathy and support. *Here*, nothing stands between the individual citizen and *his* sovereign — the majority of the people, — but the majesty of the law and the independence of the courts. Here too, as has been wisely remarked, "persecution, especially of a political nature, becomes the cause of the community against one. It is the more violent and unrelenting, because it is deemed indispensable to attain power, or to enjoy the fruits of victory." The innocent may well tremble, if the power of the dominant faction is to extend by

influence even into the courts, — if the same party is to be not only the prosecutor but the judge.

Another function of the judiciary is to interpret and uphold the constitution and the laws ; and in this respect, also, the independence of the judges is more needed in this country than in Great Britain. The theory of her government is, that parliament, embodying the three estates of the realm, is omnipotent, and can pass any law that it sees fit, however impolitic, unjust, or tyrannical its character. Hence, though the judges may sometimes be called upon, as in the two cases already mentioned, to oppose some illegal proceedings of the legislature, it can never be required to declare, that any law properly ratified by the two houses is unconstitutional and void. In the case of Wilkes, for instance, the court of King's Bench decided, in opposition to the opinion of both Lords and Commons, that " general warrants " were not authorized by the principles of the common law, nor by any statute already enacted. But if parliament had thought proper to pass a new law, expressly authorizing them in future, the court could only have submitted, and have lent its aid to carry the new statute into effect. But in this country, we have a written constitution, expressly restricting the power of the legislature to certain subjects, and, even on those, confining it within certain bounds. If these restrictions are really to amount to any thing, if the constitution is to be worth any more than the parchment on which it is engrossed, then there must be some tribunal in the state which shall have the power of enforcing them, and of putting a final stop to legislative usurpation. This duty belongs to the courts, and they are consequently required at times to interpose a peremptory negative to the proceedings of the legislature. How could the judges be expected to execute this responsible and delicate task, if the legislature, as the first token of its displeasure, could deprive them of the larger portion of their salaries ? What would be the value of the constitution, if the department which has it in charge, and whose duty is to enforce its several provisions, were at the mercy of the two other departments in the state, whose rights and powers are defined and limited in these very provisions ?

But leaving the comparison, so frequently made, though generally deceptive, of English institutions with our own, it may be asked, on what grounds does the governor of Ma-

ryland invite the legislature to limit the judges' term of office. His recommendation is not coupled with any argument to show the necessity, or even the expediency, of the proposed alteration. He urges, indeed, — with what success we have already seen, — that the example of England ought to have no weight in America. But he does not show, that the practice both of England and America is faulty in any degree, or that it is productive of evils which might be avoided under a different tenure of office. After admitting, that "a judiciary independent of all the evil passions that may influence at intervals the mass of the community is certainly desirable," he affirms there is no evidence "that a tenure for life will, in itself, exempt the occupant of a seat on the bench from the possibility of feeling, in a greater or less degree, a sympathy in the passions that sometimes sway to and fro our popular assemblies." True ; but will a periodical reappointment to office lessen this evil ? Is it probable, that the judges will be more conscientious and inflexible in the discharge of their duties — more likely to confront an angry legislature or an excited populace, if their salaries and their offices are held only at the pleasure of those bodies whom they are expected to oppose ? Governor Thomas seems to argue, that because the judiciary under the present constitution is not entirely exempt from evil influences, it ought to be placed in a situation where it will surely be exposed to these influences in a tenfold degree.

Whence arises, then, we ask again, this anxiety "to get rid of judges once commissioned," unless it be from the wish to increase the number, already too great, of those offices which the executive may fill and vacate at its pleasure, and thus satisfy the demands of its hungry partisans, and extend a corrupting influence through the whole body of the people ? Is it politic, is it desirable, that the judges of our national and state courts should hold office on the same terms as the postmasters and the collectors of customs, and be displaced as frequently as these have been during the past twenty years ? Earnestly do we deprecate such a change, for we know of nothing that would sooner shake the confidence of the people in the capacity of our peculiar institutions to protect the rights and promote the well-being of the persons for whom they are established. Let it once be fully understood, that an unpopular decision of the courts

will be followed by a prompt dismissal of the judges, and the legislature may as well abrogate the whole system of laws and judicial tribunals, and individuals bring their disputes with each other into a town meeting for arbitrament, and alleged criminals be arraigned at the bar of a popular assembly for trial. If the ultimate decision of all lawsuits and criminal trials, and doubts respecting the interpretation of the constitution, is to depend on a popular vote, let that vote be given directly and immediately on the subject in hand, and the whole cumbrous machinery of the courts, which now stands between it and its object, be done away.

There is a more specious argument for destroying the independence of the judiciary, which does not appear in the executive document now before us, though it is frequently urged in newspaper paragraphs and electioneering harangues, because it is better calculated than any other to make an impression on the unthinking multitude. It is founded on the doctrine that, in this country, the will of the people is, and ought to be, supreme in every respect, and no institution should be allowed to exist, which is independent of their authority. It is urged, that all our laws emanate from the people, and therefore should be referred for interpretation to the power which enacted them ; that the people are as competent to decide questions of law, as to select persons who shall make the decision for them ; and that a denial of this right and competency is a virtual impeachment of the constitution and the government under which we live. It is said, that the will of the people is usually made known only at stated times, and under certain forms, — as at elections, and by ballot or hand-vote upon questions regularly proposed ; but that these forms and seasons are adopted only for convenience, and the same power which required the observance of them may also dispense with it ; so that the popular will, however promulgated, shall form, for the time being, the supreme law, and the supreme exposition of the law.

This is all sophistry, and sophistry so gross, that one is almost ashamed to argue against it. The doctrine contained in it involves a denial of the superior advantages of society over the primitive and solitary condition of man, and a rejection of the forms and institutions by which alone the social state can be maintained. For its entire refutation, it would be necessary to go back to the theory which lies at

the foundation of all government, and to show that *laws properly so called*, of supreme authority and permanent obligation, are necessary to the very existence of the social union. We propose to enter into no such discursive argument, but only to adduce a few brief considerations to show the utter inapplicability of such a theory to the form of government now existing in the United States. It will be admitted, we suppose, that the popular will cannot change the nature of right and wrong, any more than it can alter the fixed relations of quantities to each other, or change the figures in the multiplication table. It cannot make injustice, cruelty, and oppression right in the eyes of God, nor remove the stamp of his approbation from holiness and virtue. The functions of "a court of justice" are indicated by its title. Its province is to decide between man and man as to the requisitions of that law, which is not the mere creature of human enactment, but which is written in the heart, and is binding upon the conscience, of every intelligent being. Its office is to do justice, and so far from listening to the expressions of public sentiment, it is bound to disregard, if need be, in the cause of duty and integrity, the opinions, the wishes, and the interests alike of individuals and of the state.

Now, the founders of our present frame of government, whatever may have been their intentions with respect to the amount of power to be lodged directly in the hands of the people, certainly did not contemplate the establishment of a republic or a democracy, which should exist without any legal enactments whatever. On the contrary, they created a legislature, prescribed the manner in which laws should be passed, defined the subjects to which they might relate, and established the tribunal by which they were to be interpreted and enforced. A law is, from its very nature, an inflexible and universal rule, that governs the conduct, and defines the rights and duties, of all persons subject to the law-making power, during the whole period of its existence. It is not an unchangeable rule for the future, because the same power which enacted may abrogate it, and put another in its place. But it is unchangeable in its application to all cases which have grown up during its continuance. Adopt, then, the most comprehensive and unlimited theory respecting the sovereignty of the people; say that they may frame what enactments they like, on all manner of subjects, or may even

annul all existing statutes, and live without law for all time to come. Still their power relates only to the present and the future. The past is fixed and irrevocable. The sovereign may enact or abrogate what rules it pleases to govern coming events and the future conduct of men ; but it cannot annul the rights, the contracts, and the expectations which have grown up under the laws that did exist. In respect to these, the government covenanted with every individual, and every individual with the government, that the statute should be respected and obeyed, *on condition* that it should be fixed and universal in its obligation. The price has been paid, and the fulfilment of the contract is demanded. Men have made bargains, and contracted obligations, and regulated their conduct, in strict conformity with the law. And they now require, that those bargains should be fulfilled, those obligations respected, and their conduct declared to be innocent, and not liable to punishment.

The business of the judiciary is to determine the rights and duties of individuals in conformity with previously existing laws. It does not, and it cannot, interfere with or limit the sovereignty of the people, because it neither claims nor exercises any portion of the law-making power. It deals only with the past ; it makes no laws, but only interprets and enforces those already made for it by another department of the government. Its decisions are binding for future cases, it is true ; but only because uniformity of interpretation is essential to that inflexibleness and universality which, as we have seen, grow out of the very nature of a legal enactment. And this stringent power of its expositions and decrees for the future continues only so long as the legislature or the people sees fit. A new rule of interpretation for new cases may be enjoined on the courts by the proper authority, with the same facility with which any new law may be passed for their guidance. But all previous cases must be determined by the old rule of construction, as settled by the courts ; since that was derived from the fixed principles of reason and justice, and the natural mode of interpretation, while the new rule is a matter merely of positive enactment. In short, the exposition of the law by the proper tribunals is to be deemed a part of the law itself, and equally imperative and unchangeable with it in reference to the past conduct of men. And it is clothed with these high attributes for the same

reason that the law itself is invested with them ; — that men may know what to expect, and how to govern their daily actions. The statute and the mode of interpreting it may be altered at pleasure by the law-making power in reference to future cases.

We now see the reason why the legal tribunals rightly claim to be considered as the fountains of equity, justice, and natural law, however arbitrary, impolitic, and even unjust, may be the usages and the special enactments which they are required to interpret and enforce. They are not responsible for the intrinsic merits or defects of these customs and laws ; that is the business of the legislature. They only unfold and apply the great principle of natural right, or law abstractly considered ; which is, that the actions of men must be judged, and their consequences determined, by a fixed law, promulgated at the time when those acts were committed, imperative and permanent in its obligation in reference to them, and definite and unchangeable in its application. To ascertain what this law is, and to apply it to the case in hand, is the high function of the courts. Public opinion cannot aid them in this task, for it is not within the province even of Omnipotence to recall the past, or to alter one jot of the eternal law of justice. The clamors of the multitude must be unheeded, for the judges are listening to a voice as awful as that which proclaimed the law in thunder from the top of Mount Sinai. It is of law thus abstractly considered, that the sublime language of Hooker hardly seems to contain an exaggeration, when he says, that "its seat is the bosom of God, and its voice is the harmony of the world."

Enough has been said to show the entire absurdity of the doctrine, that because the people have the power to make the law, they have also the ability and the right to expound and apply it as they please. An uncertain and shifting exposition of legal requisitions and commands is as bad as the absence of all law ; it destroys confidence between man and man ; it annihilates all trust in the future ; it exposes the innocent to continued and cruel apprehensions of danger, and it comforts the guilty with the hope of escape from merited punishment ; it has been the characteristic feature of the most oppressive and tyrannical governments of which there is any record in history. But waiving the farther consideration of

the doctrine in its full extent, as leading evidently to such pernicious results as to require no other refutation, it may be worth while to look more particularly at the minor inconveniences, which would follow the adoption of any portion of the theory. We say, then, that the people ought not merely to abstain from taking the law into their own hands, and giving a perfectly arbitrary exposition of it, but to guard the courts, so far as may be, from all extraneous influences; in other words, to make the independence of the judiciary as complete as possible. This duty results from the peculiar nicety and complication of the inquiries which the judges are obliged to make, the number and importance of the interests which they have in charge, and the general difficulties of their task. Their functions are not to be exercised by any person of common information and a clear understanding, nor by any mere sciolist in the law. They require deep study, and long and careful preparation. We have seen what a broad ground is necessarily covered by the labors of the jurisprudent, and what a vast accumulation of rules, usages, and special enactments he is obliged to ponder over and comprehend. For every doubt or cause of dispute that may grow out of the infinitely varied transactions and interests of men, he is to extract from this mountain of authorities a determining principle, directly applicable to the case in hand, by which it may be adjudged in strict conformity with the requisitions of justice and the previous expectations of the parties. Who will venture to come in haste, with his loins ungirded, to such a task? Who will undertake to perform it, when distracted between the clamorous expression of public opinion, the necessities of his own situation as dependent on a salary and an office that may both be taken away at the will of the multitude, and the still but powerful voice of conscience, and the known purport of the law, both requiring him to disregard the other disturbing causes, and to keep fast his own integrity? *They* tell him, that he is bound to pay as little heed to the will of the citizens as to the menaces of a single tyrant; that

> "Non civium ardor prava jubentium,
> Non vultus instantis tyranni"

must shake his rooted purpose.

The selection of competent persons to fill the various offices in the judiciary is one of the most important and

difficult tasks to be performed in a republican country. In most of the States, as well as under the national government, the judges are appointed by the executive, subject to the approval of a council, or of one branch of the legislature; and this is undoubtedly the best mode, as the responsibility of making a proper selection is thrown, in the main, upon one person, and there is the least chance of foreign and improper influences being allowed to direct the choice. As the responsibility is divided, and personal or other wrong motives are allowed to bear sway, there is greater probability that unwise appointments will be made; as in some of the States, where the judges are chosen by the legislatures, and even, in a few instances, by the people. Here is no question about the comparative wisdom and integrity of the executive, the legislature, and the people. The same man who, as one member of a large body, would give his vote, and strive to secure the votes of others, for a friend, a relative, or a member of the same political party, though known to be poorly qualified for the station, would, if the responsibility were thrown entirely upon himself, most scrupulously avoid these very ensnaring influences, and scrutinize the pretensions of a candidate with the more care and jealousy, because he suspected himself of entertaining some personal bias. He would know that the eyes of men were upon him, watchful to detect any sinister motive, and that the consequences of any improper choice would redound entirely to his own discredit. Nor does the method which we here recommend constitute any departure from the true republican principle, that elections ought to be made by the body of the people. This principle applies only when the choice is to be made *from* the body of the people; that is, when the office is such, that a man of any class or profession, without previous study or professional training, is competent to fill it. We choose a lawyer, a physician, a military man, a merchant, or a mechanic, indifferently, to be a governor or a legislator, knowing that the question of his competency depends very little on his previous avocations, and of his general character all the world can judge. But the law, as we have seen, is an abstruse and difficult science, requiring many years of study and practice for its mastery. In general, only members of the bar are candidates for situations on the bench, and of their respective qualifications,

one person, in whom the people have so much trust that they have already confided to him an important office, is a more competent judge than the people themselves, — especially when he is held to a strict responsibility. It would be even more unwise to confide the appointment of the judiciary to a numerous assembly than to choose the physician of a hospital, or the captain of a ship, by a popular vote. It is true, the mass of the people know nothing about physic or seamanship; but if they did make a poor selection, the evil would be felt only by the patients, or by the passengers and crew; whereas, the hurtful consequences of the blunders or the crimes of an incompetent or a dishonest judge in office are thrown broadcast upon the community, falling most severely upon the electors themselves.

But one other question remains to be treated in connexion with this part of our subject, and that concerns the amount of salary to be allowed to the judges, and the possibility of diminishing it while they continue in office. In regard to this last point, we may say, that it is vital to the independence of the judiciary; for if the salaries may be rêduced at pleasure by the legislature, the judges are quite as much at its mercy, as if they were subject to the chances of a periodical reappointment to office. It is mere mockery to retain a provision in the constitution, which requires that they shall hold office during good behaviour, when another department of the government may at any time deprive them of all means of support by reducing their compensation to a nominal sum, and thus render their continuance on the bench impossible. It being self-evident, that the provision would be made wholly nugatory by the assumption of such a power on the part of the legislature, to argue the matter any farther would be only to repeat all that we have said in favor of the entire independence of the tribunals of justice.

In reference to the amount, it needs only be said, that the salaries should be honorable, and sufficient to insure the highest degree of legal knowledge, ability, and character, which the bar of the place can afford. It cannot be expected, that eminent lawyers will sacrifice large professional gains for the sake of a seat on the bench, if the change does not bring with it compensation enough to support them in their usual style of living, and to maintain the dignity of the office. The standard, of course, varies in different places. The

income from his profession, of a distinguished practitioner at the bar, in one of our large cities, often exceeds ten thousand dollars a year, while that of a country lawyer may not be one thousand. Vermont and New Hampshire, therefore, can support a judiciary at less expense than New York and Massachusetts; for the salaries of the judges will naturally be proportioned to the profits of the lawyers, and as there are no large cities in the former States, both the bench and the bar are contented with comparatively small incomes. It may be added, too, that in these cases, from the limited amount of legal business created by a small population, mostly agricultural in their pursuits, the labors of the judiciary are lighter. At any rate, by offering a moderate salary, the government can command the highest legal ability to be found in the State. At Boston and New York, in order to attain the same end, it must bid higher. The necessities of the State are greater, the business of the courts larger and more important, and proportionally high inducements must be offered, before eminent practitioners will quit lucrative employments for the sake of a title and an office.

In the executive document now under review, Governor Thomas complains, that "there is not a State in the whole Union, notwithstanding the population of several of them is quadruple that of ours, where the number of the law-judges, and the amount of their salaries, are not less than those of Maryland." We doubt the truth of this assertion;* but if it were well founded, it would be not at all to the purpose. Baltimore is a city of great population and commerce, where the professional earnings of eminent lawyers are probably very great, and the State is obliged to offer them high sala-

* From the latest authority, "*The American Almanac for* 1844," it appears that New York, not reckoning her courts of Common Pleas, has twenty judges, and pays them about $44,000 per annum; Virginia, in her Court of Appeals and Circuit Courts, has twenty-seven judges, and the aggregate of their salaries is $46,550; and Pennsylvania, in her Supreme Court, District Courts, and Courts of Common Pleas, not counting the Associates in nineteen districts, has thirty-five judges, whose salaries amount to more than $75,000. According to Governor Thomas's own statement, Maryland has but "twenty-one common law judges and a chancellor, at an expense for their salaries of $36,500 per annum"; and yet he affirms, that "*New York*, *Pennsylvania*, *Virginia*, and Ohio pay respectively a less sum in the annual salaries of their judges than that with which our treasury is charged!" We might adduce several other States, in which the expense of the judiciary is greater than in Maryland; but the above specimen of the Governor's accuracy is quite sufficient.

ries before they will abandon their lucrative practice. And it can well afford to do this, considering the magnitude and importance of the business which comes before its judiciary. Ohio has no city the population of which is one half so great as that of Baltimore ; and considering the scattered situation and agricultural pursuits of the great majority of her inhabitants, it is quite probable, that her courts may be maintained at less expense than those of Maryland. It is doubtless true, that, in any State, men may be found who will accept a situation on the bench with no higher wages than those of a common ploughman ; but the duties of the office would certainly be performed by them in a ploughman's fashion. Are the people willing to trust the decision of cases in which their property, their reputations, and even their lives may be concerned, to courts constituted in this fashion ? Is it desirable, that, in all the States, as is notoriously the case in one or two already, such appointments should be made as to render the bench an object of contempt and derision to the bar ? If not, then the small portion of the annual income of the government which is devoted to the support of the judiciary must not be grudgingly given, and the salaries of the judges must rather be increased than diminished.

We need not apologize for the length of our remarks on this subject, as there is especial reason for considering it at the present day. The financial embarrassments, under which the country has suffered for some time, have induced several of the States, during the past year, to curtail to a considerable amount the sum annually paid to their judges, and a serious injury has thus been inflicted on their judiciary systems, the evil effects of which will be felt for a long period. Pennsylvania, Alabama, Louisiana, Arkansas, and Kentucky have recently effected a paltry saving in this way ; and the legislature even of the rich State of Massachusetts, with a population of three quarters of a million, and property which was assessed two years ago at three hundred millions, while the aggregate annual expenses of the government are considerably less than half a million, deemed it necessary, at its last session, to save the miserable sum of four thousand dollars a year, by cutting off about one seventh from the salaries of all the judges. Divided among the population, this saving amounts to half a cent a head ; and for the sake of this poor pittance, the legislature has demolished at a blow the very

foundation of the independence of the judiciary. And it has done this in the face of a provision in the State constitution, which requires, that the judges "shall hold their offices during good behaviour," and shall receive "honorable salaries *ascertained and established by standing laws.*" As at one session it has taken off one seventh, at the next it may remove five sevenths, of the salaries, and thus the whole body of the judges may be driven from their posts. If this measure is sanctioned by the people, we hope, for the sake of consistency, that the language of the constitution may be altered, so that this clause shall affirm what is now true, that "the judges hold office *during the pleasure of the legislature.*"

These and similar measures are adopted from the supposed necessity of conforming to the theory of our political institutions by establishing the supremacy of the people on every point, and diminishing the amount of taxation in every possible way. Away with such a mean and baseless scheme of political philosophy! It is not true, that the people desire to have arbitrary power put into their hands, to be used against the requisitions of justice, or that their own burdens should be lessened in an insignificant degree by taking away the freedom and dignity of the legal tribunals. The financial prosperity of a state depends as much on the reputation of her courts of law, as on the funds in her treasury. "Public credit," says a vigorous writer, "is wealth; public honor is security. The feather that adorns the royal bird, supports his flight; strip him of his plumage, and you pin him to the earth." Not to uphold the common credit by a watchful regard for the common integrity, is to sacrifice the highest interests of the state, and to throw a reproach on the republican name. It is to build up unjust and arbitrary power under the deceitful semblance of a democratic institution. If the judiciary is to be spoiled of its honor and its independence, if the security of property, and the rights of a citizen, are to be made the sport of popular caprice, if the country is to be subjected to all the evils of an uncertain and changeable exposition of the law, it had been better for the people if the Declaration of Independence had never been signed.